Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 13 JUNE 6, 1979 No. 23

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 79–155)

Synopses of drawback decisions

The following are synopses of drawback rates issued January 21, 1977, to February 23, 1979, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA–1–09)

Dated: May 16, 1979.

DONALD W. LEWIS
(For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings).

(A) Company: Adams & Brooks, Inc.
Articles: Hard candy.
Merchandise: Hard refined sugar.
Factory: Los Angeles, Calif.
Statement signed: January 25, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Los Angeles, February 23, 1979.

(B) Company: The Anaconda Co.
Articles: Flat-rolled aluminum sheet and foil products; aluminum foil wrap; laminated aluminum foil; rigid foil aluminum containers;

aluminum residential siding and accessories; extruded aluminum shapes.
Merchandise: Prime aluminum ingot, "T" or sow; painted or bare aluminum scrap; rolled aluminum foil; prime aluminum billet.
Factories: Various factories as set forth in manufacturer's statement.
Statement signed: November 20, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, February 16, 1979.

(C) Company: Bristol-Myers Co.
Articles: Various pharmaceutical products.
Merchandise: POAC, MOC, DBC, IBCF, PTA, BHBA, DCCD, DEB Acetate, and d1 methionine.
Factory: East Syracuse, N.Y.
Statement signed: August 26, 1977.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, February 9, 1979.
Revokes: T.D. 78–229–E, superseded.

(D) Company: Chevron Chemical Co.
Articles: Lubricating oil additives.
Merchandise: Overbased calcium sulfonate.
Factory: Belle Chasse, La.
Statement signed: January 12, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, January 29, 1979.

(E) Company: Cord Laboratories, Inc.
Articles: Chlorpromazine in granulation blend.
Merchandise: Chlorpromazine HCL.
Factory: Broomfield, Colo.
Statement signed: November 22, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Houston, January 29, 1979.

(F) Company: E. I. du Pont de Nemours & Co.
Articles: Oxone monopersulfate; sodium perborate tetrahydrate.
Merchandise: Hydrogen peroxide.
Factories: Memphis, Tenn.; Corpus Christi, Tex.; and East Chicago, Ind.
Statement signed: December 13, 1978.
Basis of claim: Appearing in.

Rate forwarded to Regional Commissioner of Customs: Baltimore, January 29, 1979.

(G) Company: ESB Ray-O-Vac Management Corp.
Articles: Lead-acid batteries.
Merchandise: Lead.
Factories: Allentown, Pa.; Atlanta, Ga.; Buffalo, N.Y.; Dallas, Tex.; Fairfield, Conn.; Los Angeles and Milpitas, Calif.; Richmond, Ky.; Sumter, S.C.
Statement signed: September 12, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, January 30, 1979.

(H) Company: Glen Raven Mills, Inc.
Articles: Finished, woven spun acrylic fabric; and spun acrylic yarn.
Merchandise: Acrylic staple fiber.
Factories: Glen Raven and Kinston, N.C.
Statement signed: January 29, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Miami, February 16, 1979.
Revokes: Unpublished Customs authorization letter of December 8, 1978, superseded.

(I) Company: The B. F. Goodrich Co.
Articles: Tires, rubber pneumatic.
Merchandise: Synthetic rubber.
Factories: Tuscaloosa, Ala.; Akron, Ohio; Miami, Okla.; Oaks, Pa.; Thomaston, Ga.; Woodburn, Ind.
Statement signed: August 18, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Miami, February 23, 1979.

(J) Company: The B. F. Goodrich Co.
Articles: Geon compounds.
Merchandise: Chlorinated polyvinyl chloride resin (CPVC).
Factories: Avon Lake, Ohio; Louisville, Ky.
Statement signed: January 10, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, February 6, 1979.

(K) Company: Hercules Inc.
Articles: Toxaphene.

Merchandise: SD turpentine, processed and unprocessed gum turpentine.
Factory: Brunswick, Ga.
Statement signed: May 14, 1978.
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation.
Rate forwarded to Regional Commissioner of Customs: Baltimore, February 16, 1979.
Revokes: T.D.'s 77–135–P and 77–135–R, superseded.

(L) Company: Holly Hill Fruit Products Co., Inc.
Articles: Frozen concentrated orange juices; single-strength orange juices.
Merchandise: Frozen concentrated orange juice (not less than 50° Brix).
Factory: Davenport, Fla.
Statement signed: January 22, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Miami, February 8, 1979.

(M) Company: Juice Bowl Products, Inc.
Articles: Canned single-strength pineapple juice, grape juice, and orange juice; canned juice drinks; and canned blended single-strength juices.
Merchandise: Unsweetened concentrated pineapple juice, and grape juice; frozen concentrated orange juice.
Factory: Lakeland, Fla.
Statement signed: January 24, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Miami, February 7, 1979.

(N) Company: Lawrence Manufacturing Co.
Articles: Industrial fabric.
Merchandise: Carded cotton yarn.
Factory: Lowell, Mass.
Statement signed: December 29, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Boston, February 16, 1979.

(O) Company: Long Manufacturing N.C. Inc.
Articles: Grain storage bins and allied equipment.
Merchandise: Galvanized steel.
Factories: Tarboro, N.C.; Davenport, Iowa.

Statement signed: January 25, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore; February 16, 1979.

(P) Company: McCleary Industries, Inc.
Articles: Caramel corn (candy-coated popcorn).
Merchandise: Brown sugar.
Factory: South Beloit, Ill.
Statement signed: December 27, 1978.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: San Francisco; February 2, 1979.

(Q) Company: Micro Design Division of Bell & Howell Co.
Articles: Microfilm readers and reader printers.
Merchandise: Lenses, prisms, and high-intensity lamps.
Factory: Hartford, Wis.
Statement signed: June 19, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago; January 30, 1978.

(R) Company: Mobil Oil Corp.
Articles: Greases, paraffin wax, and blending oils.
Merchandise: Petroleum lubricating oils and wax-base stocks.
Factories: Albany, Buffalo, and Brooklyn, N.Y.; Cicero, Ill.; Cleveland, Ohio; East Boston, Mass.; Kansas City, Kans.; Milwaukee, Wis.; Omaha, Nebr.; Oakland, and Vernon, Calif.; Portland, Oreg.; St. Louis, Mo.; St. Paul, Minn.; Woodhaven, Mich.
Statement signed: February 23, 1976.
Basis of claim: As provided in the drawback rate contained in section 22.6(g–1) of the Customs Regulations.
Rate forwarded to Regional Commissioner of Customs: Baltimore, January 21, 1977.

(S) Company: Nyden, Inc.
Articles: Fastener-type strings of nylon.
Merchandise: Nylon—type 6.
Factory: Clinton, Mass.
Statement signed: September 25, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Boston; February 23, 1979.

(T) Company: Ouachita Finishing Co., Inc.
Articles: Bleached, dyed, starched, resinated, and/or coated piece goods.
Merchandise: Greige piece goods.
Factory: Monroe, La.
Statement signed: January 4, 1979.
Basis of claim: Used in, less valuable waste.
Rate forwarded to Regional Commissioner of Customs: New York, February 16, 1979.

(U) Company: Penntube Plastics Co.
Articles: Extruded tubing, profiles, shapes, and forms of plastics.
Merchandise: Tetrafluoroethylene polymers, copolymers of tetrafluoroethylene, and fluorinated ethylene propylene; and ultrahigh, molecular-weight polyethylene.
Factory: Clifton Heights, Pa.
Statement signed: August 28, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, February 14, 1979.

(V) Company: Pepsi Cola/Seven-Up Bottling Co. of Seattle.
Articles: Still beverages; carbonated beverages.
Merchandise: Liquid invert refined sugar.
Factories: Seattle, Wash.; Honolulu, Hawaii.
Statement signed: December 14, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, February 12, 1979.

(W) Company: Royal Crown Bottling Co., division of Beatrice Food Co.
Articles: Still or carbonated beverages.
Merchandise: Liquid invert refined sugar.
Factory: Oakland, Calif.
Statement signed: October 11, 1978.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, January 24, 1979.

(X) Company: Topps Chewing Gum, Inc.
Articles: Bubble gum and hard candy (confectionery).
Merchandise: Hard and liquid refined sugar.
Factories: Duryea and Scranton, Pa.
Statement signed: September 29, 1978.

Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, February 8, 1979.

(Y) Company: Vernell's Fine Candies.
Articles: Confectionery.
Merchandise: Hard refined sugar.
Factory: Seattle, Wash.
Statement signed: January 10, 1979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, February 8, 1979.

(Z) Company: Xaloy, Inc.
Articles: Bi metallic cylinders.
Merchandise: Steel bars.
Factory: Pulaski, Va.
Statement signed: October 24, 1978.
Basis of claim: Used in, less-valuable waste.
Rate forwarded to Regional Commissioner of Customs: New York, January 29, 1979.

(T.D. 79-156)

Foreign Currencies—Daily Rates for Countries Not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

Brazil cruziero:	
May 7–9, 1979	$0.0420
May 10–11, 1979	.040350
People's Republic of China yuan:	
May 7, 1979	$0.628220
May 8–11, 1979	.630756

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Hong Kong dollar:	
May 7, 1979	$0.197785
May 8, 1979	.197922
May 9, 1979	.197981
May 10, 1979	.197628
May 11, 1979	.197824
Iran rial:	
May 7–11, 1979	$0.013975
Philippines peso:	
May 7–10, 1979	$0.1365
May 11, 1979	.1370
Singapore dollar:	
May 7, 1979	$0.453926
May 8, 1979	.453721
May 9, 1979	.454133
May 10, 1979	.453001
May 11, 1979	.454545
Thailand baht (tical):	
May 7–11, 1979	$0.0490

(LIQ-3-O:D:E)

Date: May 18, 1979.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

May 22, 1979.

DONALD W. LEWIS,
Acting Assistant Commissioner,
Regulations and Rulings.

(C.S.D. 79-217)

Bonds: Whether a Surety Is Liable on an Entry Bond for Principal's Failure to Answer a Request for Information on Customs Form 28

Date: February 6, 1979
File: BON-1-R:CD:D
209788 WR

This ruling concerns the requirement for filing certain entry documents in order to satisfy the bond rider issued to cover release of merchandise before entry, as provided by section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484).

Issue.—1. Whether the phrase "such other documentation," as used in section 484(a)(1)(B), Tariff Act of 1930, as amended, (19 U.S.C. 1484(a)(1)(B)), refers to a document that is found to be necessary after examination of the submitted entry package by an appropriate Customs officer?

2. Whether the failure of a principal to comply with a summons issued under section 509, Tariff Act of 1930, as amended (19 U.S.C. 1509), subjects the surety to liability under the entry bond?

3. Whether a principal's failure to furnish a document subjects the surety on an entry bond to liability under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592)?

4. Whether a Customs bond is rule of procedure or a substantive rule of general applicability which requires publication in the Federal Register under 5 U.S.C. 552?

Facts.—The inquirer hypothesized that one of its principals could fail to answer a "Request for Information" (Customs) form 28 that

issued after the entry papers were submitted. The inquirer was concerned that this postentry omission constituted a violation of the entry bond.

Law and Analysis.—On November 20, 1978, the Customs Service issued rider R to modify existing "Immediate Delivery and Consumption Entry Bonds" (Customs forms 7551 and 7553) and the "General Term Bond for Entry of Merchandise" (Customs form 7595). The Customs Service established the rider in order to protect the revenue and insure compliance with the new entry requirements set by section 102 of the Customs Procedural Reform and Simplification Act of 1978.

If a principal obtains release of merchandise under the immediate delivery procedure provided by section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), the existing bonds are conditioned to require timely filing of the entry and deposit of duties by the principal. Under 19 CFR 141.68(e) and entry is made under a formal consumption entry when the specified form (Customs form 7501) is properly executed and deposited, together with any related documents required by the Customs Regulations to be filed with the form at the time of entry and any required duty is deposited. Consequently, any document which must be included in the entry package in order to satisfy the requirement of making an entry under 19 U.S.C. 1448(b) can be ascertained before the entry package is submitted. Further, a surety on an entry bond is able to protect its interests against its principal if that principal fails to make a timely entry because the principal's default occurs, if it occurs at all, immediately on expiration of the authorized 10-day filing period.

Under proposed section 141.0a(d), Customs Regulations, filing means the delivery of the entry documentation required by 19 U.S.C. 1484(a); the delivery of the entry summary documentation required to assess duties, collect statistics, and determine whether other lawful requirements are met; or the delivery of the entry summary documentation which serves as the entry and entry summary. If any information, other than that required by law or regulation, is needed by an import specialist, it is possible to interpret the proposed provision so as to preclude satisfaction of the filing requirement until the additional information is delivered to the appropriate Customs officer. This could arise after a principal submits all documents required by law or regulation and the import specialist, in reviewing those documents, believes that additional information is needed to classify the merchandise. In that situation, if an import specialist issues a request for information on Customs form 28, does the answer to the request become part of the required documentation which must be delivered to Customs before the entry is considered to be filed?

It seems clear that one of the purposes Congress sought to achieve by the Customs Procedural Reform and Simplification Act of 1978 was to introduce a degree of certainty to Customs transactions. For example, section 209 of that act added new section 504 to the Tariff Act of 1930 (19 U.S.C. 1504) which established definite time periods for the liquidation of entries. See S. Rept. 95–778, 95th Cong., 31 et seq. (1978) and H. Rept. 95–621, 95th Cong., 24 et seq. (1978). In addition, the House in the last sentence on page 25 of its report stated, "Thus, the sureties can take appropriate measures upon receiving this notice to make sure that at least as to continuing activities, the risk of loss will be minimized." While liquidation can be delayed in certain circumstances, there must be compliance with the statutory procedures.

Further, under 19 CFR 141.66 a bond may be given to guarantee production of a required document that is not available at the time of entry. This provision is not intended to be changed by the proposed regulations. See 43 F.R. 55787. The requirement of a bond to guarantee production of a missing document presupposes that the document is known to be missing when the entry papers are submitted. Such a bond is not designed to be used to guarantee production of information which is determined to be necessary only after the import specialist reviews the submitted entry package. While the entry is filed despite the absence of a required document, a failure to timely furnish that missing document subjects the principal and surety to liquidated damages for breach of that condition. However, assuming all other requirements for entry were met, there would be no breach of the condition requiring filing of the entry. Of course, failure to file a necessary document or provide information could result in a suspension of liquidation.

The inquirer, a surety, was concerned that it might become liable if one of its principals failed to answer a summons issued under 19 U.S.C. 1509. That provision permits certain Customs officers to examine documents relevant to an inquiry conducted for determining the correctness of an entry. The sanctions for a violation of 19 U.S.C. 1509 are in 19 U.S.C. 1510. Under 19 U.S.C. 1510 the failure to comply with a lawful summons may only be enforced by judicial action. Accordingly neither bond rider "R" nor the proposed regulations are to be interpreted so as to make a surety liable under the bond if a principal is found to violate 19 U.S.C. 1509.

Similarly, in pertinent part, 19 U.S.C. 1592 imposes liability on a person who by fraud, gross negligence, or negligence may enter, introduce, or attempt to enter or introduce merchandise by means of a material omission. Consequently, while a principal's failure to submit a document required by an existing law or regulation as part of the entry could result in the assessment of liquidated damages for

failure to make entry or for failure to provide a necessary document, that omission by a principal does not make a surety liable under 19 U.S.C. 1592.

Finally, the inquirer asserts that bond rider R is either a substantive rule of general applicability of a rule of procedure which requires publication in the Federal Register under 5 U.S.C. 552. Since the inquirer also expressed a desire to be able to comment on the published bond rider, it is believed that the inquirer intended to cite 5 U.S.C. 553 rather than 5 U.S.C. 552. The latter provision was designated primarily to make agency information available to the public. The other provision, 5 U.S.C. 553, established the procedures for rule-making by an Agency. Paragraph (c) of 5 U.S.C. 553 provides for the public comment period which was referred to by the inquirer.

We do not believe that the format of a bond or a bond rider constitutes a rule within the meaning of 5 U.S.C. 551(4). That definition refers to statements of generally applicable policies that are binding on the affected public. It has been said that rulemaking, is legislation at the administrative level. Essentially, rules are documents which have general applicability and legal effects. See *PBW Stock Exchange, Inc.* v. *Securities and Exch. Com'm.*, 485 F. 2d 718 (3rd Cir. 1973), cert. den. 416 U.S. 969; *Willapoint Oysters* v. *Ewing*, 174 F. 2d 676 (9th Cir 1949), cert. den. 338 U.S. 860, reh. den. 339 U.S. 945, S. S. Doc. 248, 79th Cong., 14 (1946); and Davis, *Administrative Law Treatise*, S5.01 (1958).

A bond is no more than a contract and until signed by the parties, it binds no one. *Samuel Shapiro & Co.* v. *U.S.*, C.A.D. 949, 56 C.C.P.A. 31, 35 (1968); and Sterns, "The Law of Suretyship," chapter 1 (1951). Courts have held that the giving of a bond was voluntary when it was given for the purpose of obtaining merchandise. *U.S.* v. *Daniel F. Young, Inc.* T.D. 50745 and 46 F. Supp. 373 (D.C. S.D. N.Y. 1942); aff'd. 134 F. 2d 413; and *Samuel Shapiro & Co.* v. *U.S.*, C.A.D. 949, 56 C.C.P.A. 31 (1968). In the *Samuel Shapiro* case, the court, in footnote 6, disposed of the appellant's contention that the bond condition was imposed on it against its will by quoting from the Government's brief. In substance the court said that if a person chose to give a bond to obtain clearance of his goods, it was a voluntary act on his part and that neither he nor his sureties have a ground for complaint. In the case of *U.S.* v. *Gissel*, T.D. 73–86, 353 F. Supp. 768 (S.D. Tex. 1973), aff'd. 493 F. 2d 27 (5th Cir. 1974), cert. den. 419 U.S. 1012, the court of appeals held that when an agent voluntarily undertook the obligations of its principal by giving a bond, it was contractually bound by the terms of that bond.

Moreover, Congress, in enacting section 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1623), permitted the Secretary of the

Treasury to authorize Customs officers to require bonds in any case in which a bond or security is not specifically required by law. Neither section 484 or 505, Tariff Act of 1930, as amended (19 U.S.C. 1484 1505), specifies a bond or other security. It is noteworthy that 19 U.S.C. 1623 permits implementation of the bond by regulation or specific instruction. It has long been recognized that the term "regulation" is synonymous with the term "rule." Davis, "Administrative Law Treatise," chapter 5 (1958). Accordingly, the term "specific instruction" must have a meaning independent of the term "regulation". If "specific instruction" has the same legal connotation as "regulation" its presence in 19 U.S.C. 1632 would be meaningless and duplicative.

Finally, there has been a long-standing administrative practice of promulgating bond forms and bond riders without reference to the rulemaking procedures in 5 U.S.C. 553. For example: The licensed public gauger's bond was promulgated by notice BON-3-DB, dated June 2, 1967; a rider to the private carriers bond was promulgated by circular BON-2-R:CD:D dated February 10, 1976; a rider to the proprietor's warehouse bond was promulgated by circular WAR-1-O: I:C, dated June 30, 1977; the single-entry landing bond was promulgated by T.D. 47886; and the copyright bond was promulgated by circular COP-1-PEN dated March 23, 1961.

Holding.—1. The phrase "such other documentation" for the purpose of satisfying the entry filing requirement refers to documents required by a law or regulation that is in effect when the entry package is submitted.

2. A principal's failure to comply with a summons issued under 19 U.S.C. 1509 does not subject the principal's surety to liability under an entry bond.

3. A principal's omission to file a document does not subject the principal's surety to liability under 19 U.S.C. 1592.

4. A Customs bond is not a rule of general applicability or a rule of procedure; it is a contract, and there is no legal requirement to follow the rulemaking procedures of 5 U.S.C. 553 in promulgating the format for a Customs bond.

(C.S.D. 79-218)

Classification: Tablecloths and Napkins With Lacy Appearance

Date: July 17, 1978
File: CLA-2:R:CV:MC
059514 PR

This is in reply to your letter on behalf of (client) concerning the tariff status of certain tablecloths and napkins. The submitted

samples are labeled to be made in Japan and to be made from a blend of polyester and rayon fibers.

A napkin and a tablecloth were submitted as samples. The napkin is approximately 19 inches square and has hemmed edges. The tablecloth is oval shaped, has hemmed edges, and measures approximately 60 inches by 84 inches. Both samples are made from a knit fabric that has had portions of the yarns forming that fabric removed by a chemical process. Although both samples have a lacy appearance, since the openwork designs were not formed concurrently with the intertwisting of the yarns forming the fabrics, neither the napkin nor the tablecloth is considered to be a lace article.

Accordingly, both samples are classifiable under the provision for other furnishings of manmade fibers, not ornamented, knit, in item 367.50, Tariff Schedules of the United States (TSUS), with duty at the column 1 rate of 12.5 cents per pound plus 16 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–219)

Classification: Refreshment Drink

Date: July 24, 1978
File: CLA–2:R:CV:MC
059035 CM

Your letter of December 14, 1977, requests the tariff status of a Spanish refreshment drink.

The product called "Horchata De Chufa" was found on analysis to be a light-tan, sirupy liquid which is a concentrated extract of the chufa plant, an edible cyperus. It contained by weight approximately 37 percent sucrose and invert sugar, 34 percent added commercial glucose with the remainder being moisture. The instructions indicate that the product should be diluted before use. The product is not potable in its condition as imported.

On the basis that the product contains some natural sugars from the extraction of the chufa plant and that its ingredients are edible in nature, it is considered an edible preparation. It is classifiable under the provision for edible preparations not specially provided for in item 182.98, Tariff Schedules of the United States, dutiable at the rate of 10 percent ad valorem.

In addition the merchandise may be subject to the requirements of the Bureau of Foods, Food and Drug Administration, Department of Health, Education, and Welfare, to whom copies of the correspondence have been forwarded for their comments.

(C.S.D. 78-220)

Classification: Woman's Shirt With Front and Back Yokes and Patch Pockets; Ornamentation

Date: July 31, 1978
File: CLA-2:R:CV:MC
059487 PR

This is in reply to your letter of May 15, 1978, on behalf of (client) concerning the tariff classification of a certain shirt.

The submitted sample is a woman's woven shirt which is labeled to be 60 percent cotton and 40 percent polyester. The label also indicates that it is a product of Taiwan. It has long sleeves with double-snap cuffs, a full, front-buttoned opening with placket secured by snaps, a pointed collar, two front patch pockets with flaps secured by single snaps, a smaller, though similar patch pocket on the upper arm area of the left sleeve, and a rounded bottom. There is an overlaid back yoke that has a single point at its approximate midsection. On each of the front shoulder areas, there is an overlaid fabric in the form of a yoke. Starting at the neck seam under the collar, approximately 1 inch above the placket, each of the overlaid front yokes extends downward to a point slightly above the patch pocket. From that point, the lowest edge of the yoke is parallel to the top of the patch pocket (horizontal).

Overlaid yokes on shirts are generally considered ornamentation for tariff purposes unless there is an established and uniform practice to the contrary. One such practice applies to Western-style shirts which have yokes that taper to a single point in their approximate midsection. That practice of classification does not extend to shirts that have patch pockets on their sleeves or to front yokes, as found on the submitted sample, which do not taper to a point at their midsection.

Accordingly, the submitted sample is classifiable under the provisions for other women's wearing apparel, either in item 382.00, Tariff Schedules of the United States (TSUS), if in chief value of cotton, with duty at the rate of 35 percent ad valorem, or in item 382.04, TSUS, if in chief value of manmade fibers, with duty at the rate of 42.5 percent ad valorem.

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The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–221)

Classification: Three-Layered Textile Material

Date: August 1, 1978
File: CLA–2:R:CV:MC
059482 PR

This is in reply to your letter of June 26, 1978, concerning the tariff status of a new product which you intend to manufacture in Canada.

You state that the merchandise will consist of three layers. Each of the two outer layers will be spun-bonded nylon webs of continuous filaments that have been bonded together by means of heat and pressure. You submitted samples of these webs and they constitute nonwoven fabrics. The center layer of the merchandise will consist of polyvinyl chloride coated polyester mesh crenette fabric. This fabric, although appearing to be a woven fabric, is not woven. We have previously ruled, file 039981, dated July 19, 1977, that crenette fabric is classifiable under the provisions for other textile fabrics not specially provided for, in either item 359.50, Tariff Schedules of the United States (TSUS), if in chief value of the manmade fiber yarns comprising that fabric, or in item 359.60, TSUS, if in chief value of the plastic holding those yarns together.

If the nonwoven fabric webs, which you referred to as Cerex, were imported in material lengths by themselves, they would be classified under the provision for nonwoven fabrics, in item 355.25, TSUS, as you suggested.

The classification of the three-layer merchandise which you intend to import depends on its condition as imported and its component material of chief value. Since you indicate that the merchandise will be used in the construction of automotive seats and as backing for automotive carpets, we assume the merchandise will be imported in material lengths and not cut to any particular size for a specific use. We further assume, that the merchandise is in chief value of manmade fibers. In determining the component material of chief value in that merchandise, the cost to the manufacturer of the two nonwoven webs plus the cost of the manmade fiber in the crenette fabric is compared to the cost to the manufacturer of the plastics in the crenette fabric.

Based on those assumptions, the merchandise would be classifiable in item 359.50, TSUS, and dutiable at the rate of 25 cents per pound plus 30 percent ad valorem. Since the merchandise is a laminated product, even if it were in chief value of the two nonwoven fabrics, it would not be classifiable in item 355.25.

You asked about the applicability of item 807.00, TSUS. Without detailed descriptions of the merchandise, and samples thereof, exported from the United States to Canada and of the processes to which that merchandise is subjected to in Canada, we are unable to determine whether or not the merchandise would be subject to treatment under item 807.00.

(C.S.D. 79–222)

Classification: Spray-Dried Fruit Powders

Date: August 1, 1978
File: CLA–2:R:CV:MC
059365 CM

This is in reference to your letter with enclosures of April 4, 1978, concerning the tariff status of certain spray-dried fruit powders, apparently the products of most-favored-nation countries and areas.

The powders are identified as spray-dried raspberry puree, spray-dried blackcurrant juice, and spray-dried orange comminute. Each of the products contains proportionately 40 percent fruits and 60 percent carriers. The total sugar content of the carrier amounts to approximately 70 percent and is identified as glucose.

These products are considered edible preparations and are classifiable under the provision for edible preparations not specially provided for in item 182.98, Tariff Schedules of the United States (TSUS), dutiable at the rate of 10 percent ad valorem.

The articles may be subject to the requirements of the Bureau of Foods, Food and Drug Administration, Department of Health, Education, and Welfare, Washington, D.C. 20204, to whom copies of this correspondence have been forwarded.

(C.S.D. 79–223)

Classification: Socks and Calf Warmers Constituting an Entirety

Date: August 1, 1978
File: CLA–2:R:CV:MC
059449 HG

This is in reply to your letter of May 3, 1978, concerning the tariff

status of certain merchandise which we assume is a product of West Germany. Samples were submitted.

The samples consist of a pair of knit socks and a pair of knit calf warmers. Each calf warmer is a knit tube with a drawstring at one end. You state that the merchandise is 90 percent cotton and 10 percent wool. We assume that the merchandise is in chief value of cotton. The socks and the calf warmers are made from matching green and white fabric.

Assuming the socks and calf warmers are packaged, invoiced, shipped, and sold as a set and not separately, they are considered to be an entirety for tariff purposes and are classifiable as one complete article.

Since the merchandise does not appear to be designed for the exclusive wear of men or boys, it is classifiable under the provision for other women's, girls', or infants' wearing apparel, not ornamented, of cotton, knit, in item 382.06, Tariff Schedules of the United States, with duty at the rate of 21 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–224)

Classification: Reconstituted Orange Juice

Date: August 1, 1978
File: CLA–2:R:CV:MC
059656 CM

Your letter of July 5, 1978, requests the tariff status of certain orange juice.

You state that the company is considering importing ultrahigh temperature, Florida reconstituted orange juice, from Canada. The concentrate from Florida will be shipped to Canada for reconstituting and packaging. It will then be shipped to Puerto Rico for consumption.

You ask if the reconstituted and packaged product will be subject to the duty applicable to other citrus juice, not concentrated, in item 165.30, Tariff Schedules of the United States (TSUS).

Since the fruit juice concentrate is to be reconstituted in Canada it is classifiable under the provision for other citrus juice, not concentrated in item 165.30, TSUS, dutiable at the rate of 20 cents per gallon.

(C.S.D. 79–225)

Classification: Dacron Skimmer Sleeves Used in Swimming Pool Filtration Systems

Date: August 16, 1978
File: CLA–2:R:CV:MC
059648 EA

In your letter of June 26, 1978, you inquired as to the tariff status of merchandise from Taiwan described as skimmer sleeves. The sleeves are used as inserts in skimmer baskets for use in swimming pool water filtration systems. Submitted samples consist of knit pouch-like textile articles composed of dacron that are approximately 7 inches wide and 7 inches deep for one sample size and 5 inches wide and 6½ inches deep for the other.

You suggest classification of the skimmer sleeves under the provision in the Tariff Schedules of the United States (TSUS), for filtering machinery and apparatus and parts thereof. However, headnote 1(iv) of part 4, schedule 6, (TSUS), which part covers the provisions for filtering machinery, provides that such part does not cover articles of textile material. The skimmer sleeves are instead classifiable under the provision for other articles, not specially provided for, of man-made fibers, knit, in item 389.40, TSUS, dutiable at the rate of 25 cents per pound plus 25 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–226)

Classification: Cyanopyridine, Used in the Production of Niacin

Date: August 16, 1978
File: CLA–2:R:CV:MC
059589 H

Your letter of May 24, 1978, concerns the dutiable status of cyanopyridine from (name) of West Germany.

Cyanopyridine is referred to as an agricultural intermediate which is used in the production of niacin. It is suggested that the product

is classifiable under item 437.82, Tariff Schedules of the United States (TSUS), the provision for synthetic (nonbenzenoid) vitamins. Since cyanopyridine is a cyclic organic chemical having a modified benzenoid structure and does not possess a drug and thereapeutic capability, in and of itself, it could not be classified as a nonbenzenoid drug.

Rather, as it is a benzenoid intermediate, it is correctly classifiable under item 403.60, TSUS. The rate of duty is 1.7 cents per pound plus 12.5 percent ad valorem.

Benzenoid products which are competitive with similar products of U.S. origin are subject to ad valorem rates based on the American selling price of the domestic product.

(C.S.D. 79–227)

Classification: Dog Sweaters of Manmade Fibers

Date: August 23, 1978
File: CLA–2:R:CV:MC
059426 HG

This is in reply to your letter of April 25, 1978, concerning the tariff status of certain dog sweaters which we assume are products of either Hong Kong or Taiwan. A sample was submitted.

The submitted sample is a knitted pullover sweater with short sleeves through which a dog's forelegs are placed. It has a turtleneck at one end and an opening at the other end that is tapered to a "V" shape on the underside of the garment. The sweater is stated to be made from manmade fibers and is blue, yellow, red, and white.

Merchandise as represented by the submitted sample is classifiable under the provision for other textile articles not specially provided for, not ornamented, of manmade fibers, knit, in item 389.40, Tariff Schedules of the United states, with duty at the rate of 25 cents per pound plus 25 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–228)

Classification: Synthetic Rubber

Date: August 23, 1978
File: CLA–2:R:CV:MC
059580 MG

This is in reply to your letter of June 13, 1978, concerning the tariff status of two silicone products from the United Kingdom.

Samples consist of two clear gums, labeled E301 and E303, and four specimens of end products—a foam piece, tubing (based on E303), and two sheets, one each based on E301 and E303.

Laboratory analysis showed E301 to be a methyl polysiloxane. Although you describe E303 as vinyl polysiloxane, analysis indicated it to be a methyl-vinyl polysiloxane. Strips were cut from each of the sheets based upon E301 and E303 and subjected to a stretch test. Both pieces conform to the definition of "rubber" in headnote 2, subpart B, part 4, of schedule 4, Tariff Schedules of the United States (TSUS). Because they can be cross-linked, both E301 and E303 (represented by the samples in liquid form) also meet the definition of "rubber" in headnote 2.

Both E301 and E303 are classifiable under the provision for synthetic rubber in item 446.15, TSUS, and are dutiable at 3 percent ad valorem.

(C.S.D. 79–229)

Generalized System of Preferences: Effect of GSP on the Rate of Duty Applicable to Sets Classifiable Under Item 651.75, TSUS

Date: October 7, 1976
File: R:CV:S MH/JLV
044310/520748

This ruling concerns the effect of the generalized system of preferences on the rate of duty for sets classifiable under tariff item 651.75, Tariff Schedules of the United States.

Issue.—Is the generalized system of preferences (GSP) a factor in the determination of the highest rate of duty of component articles in a set classifiable under item 651.75, Tariff Schedules of the United States (TSUS), if one or more of the component articles qualify for duty-free treatment under the GSP?

Facts.—Sets of tools classifiable under item 651.75, TSUS, would be imported from a beneficiary developing country (BDC). The sets

could consist of one or more articles which have been designated as eligible for duty-free treatment under the GSP.

Law and analysis.—Tariff item 651.75, TSUS, provides for sets (except sets specially provided for) which include two or more of the tools, knives, forks, spoons, or other articles provided for in different rate provisions of schedule 6, part 3, subpart E, TSUS. The rate of duty for such sets is the rate of duty applicable to that article in the set subject to the highest rate of duty. Item 651.75 has not been designated as eligible for the GSP.

Although a set under item 651.75 is not eligible for the GSP, the component articles may be eligible and qualify for the GSP. We are of the opinion that, subject to compliance with the requirements for GSP eligibility, GSP may be used to determine the rate of duty of the component articles of the set. A set consisting entirely of articles which qualify for GSP duty-free treatment would be entitled to free entry. The free entry of the set would not be made under the GSP in such a case, but the rate of duty under the "highest rate rule" would have been reduced to "free" by virtue of a GSP determination of the rate of duty of individual component articles.

If one component article of the set fails to qualify under the GSP while all other components do qualify as duty free, then the highest rate rule would require that the rate of duty on the entire set be determined by the rate for the one dutiable component. A similar result would come about if an article not eligible for the GSP were included in the set.

Holding.—A set classifiable under item 651.75, TSUS, may be entered free of duty under the highest rate rule if all the component articles in the set qualify for duty-free treatment under the GSP or are otherwise entitled to entry free of duty. In the event that one or more of the component articles do not so qualify or are not entitled to free entry, the highest rate applicable to those articles will determine the rate of duty on the entire set.

(C.S.D. 79-230)

Carrier Control: Repair Cable Carried Between U.S. Ports by Cable-Laying and Repair Vessel Not Qualified To Engage in Coastwise Trade; 46 U.S.C. 883

October 16, 1978
Date: VES-2-R:CD:C/VES-3
File: 103217 CH

This ruling concerns a request for a waiver of 46 U.S.C. 883.

Issues.—1. Can the provisions of the coastwise laws be waived for reasons unrelated to the national defense?

2. Would repair cable, laden at a coastwise port on a cable-laying and repair vessel not qualified to engage in the coastwise trade and carried on the vessel for a substantial period as part of its repair cable inventory, have been transported coastwise in violation of 46 U.S.C. 883 when offladen at another coastwise port?

Facts.—Ten nautical miles of repair cable, manufactured in England, were there, on January 28, 1970, laden on board a cable-laying and repair vessel operating under a U.S. register prohibiting its engaging in the coastwise trade, carried as ship's repair stock until offladen into bonded storage at San Diego on March 11, 1975, then reladen on the vessel on October 22, 1975, and carried on it since as a part of its repair cable inventory. It is proposed to offlade this repair cable into bonded storage at Honolulu and a waiver of the coastwise laws is requested to permit this. The asserted bases for granting the waiver are that the space the repair cable takes up on the vessel is needed for the cable to be laid for several Caribbean cable systems, that cable storage facilities at San Diego are completely full, and that the repair cable is being carried, not as cargo, but as material necessary to the discharge of the vessel's mission.

Law and analysis.—1. The only general authority to waive the provisions of the navigation laws (including the coastwise laws) is contained in the act of December 27, 1950 (note preceding 46 U.S.C. 1), which provides for waivers deemed necessary in the interest of national defense. Absent a showing of necessity in the interest of national defense, there is no authority to waive the provisions of the coastwise laws.

2. 46 U.S.C. 883 provides in effect that no merchandise shall be transported between coastwise points in any other vessel than one qualified to engage in the coastwise trade. The offlading at one coastwise port from a vessel not qualified to engage in the coastwise trade of cable laden on it at another would appear to consummate a coastwise transportation of merchandise prohibited by 46 U.S.C. 883. However, the Customs Service has previously held that the installation and use of an item as vessel equipment will have broken the continuity of its transportation between coastwise points. While cable carried as part of the repair cable inventory of a cable-laying and repair vessel is not vessel equipment and is not installed, we are of the opinion that its carriage on the vessel in this status for substantial periods would similarly break the continuity of its transportation between coastwise points, so that its offlading at Honolulu after having originally been laden at San Diego would not consummate a coastwise transportation of merchandise in violation of 46 U.S.C. 883.

294-260—79——4

Holdings.—1. There is no authority to waive the coastwise laws in the absence of a showing of necessity in the interest of national defense.

2. When repair cable is laden at a coastwise port on a cable-laying and repair vessel not qualified to engage in the coastwise trade, carried on the vessel for a substantial period as part of its repair cable inventory, and offladen at another coastwise port, the continuity of its coastwise transportation will be considered to have been broken by its carriage on the vessel in that status for that period, so that its offlading at the second coastwise port will not be considered to consummate a transportation of the cable in violation of 46 U.S.C. 883.

(C.S.D. 79-231)

Classification: Plant Dyes

Date: October 24, 1978
File: CLA-2:R:CV:MC
059573 MG

This ruling concerns the Customs classification of several plant dye materials.

Issues.—What are the tariff classifications for madder root, henna leaves, alkanet root, indigo, and tara?

Facts.—Madder root is the root of the *rubia tinctorum* and related species and yields a red dye. Henna leaves are the dried leaves of the *lawsonia inermis* and yield a yellow or auburn dye. Alkanet root is the root of the alkanet plant and is stated to yield a grayish dye. Each of these plant dye materials is assumed to be a product of Pakistan.

Tarapowder, the ground seed pods of the *caesalpinia spinosa*, is a brown dye of high tannin content, assumed to be a product of Peru. Indigo, which is extracted from either the *indigofera tinctoria* or closely related species of *indigofera*, will be imported as a blue dye. The indigo is assumed to be a product of either Mexico or Indonesia.

These materials will be sold to textile craft supply stores and will be used by the ultimate consumer for dyeing textile fibers. The henna may be marketed for use as a cosmetic hair dye.

Law and analysis.—Henna and madder are provided for by name in items 470.10 and 470.15 of the Tariff Schedules of the United States (TSUS). Item 470.10, TSUS, provides for these materials if they are crude or processed in form when imported. Tara is provided for by name in items 470.20 and 470.25, TSUS. Item 470.20 applies to tara which is crude or processed in form when imported. For purposes

of items 470.10 and 470.20, TSUS, the phrase "crude or processed" refers to materials which are crude or which have been processed by shredding, grinding, chipping, crushing, or any similar process, but not otherwise processed. (See headnote 2(a), subpart A, pt. 9, schedule 4, TSUS.) For purposes of this ruling it is assumed that the henna, madder, and tara are imported in crude or processed form consistent with this definition.

Alkanna tinctoria is classified as a vegetable dye plant in Kelsey & Dayton's "Standardized Plant Names," 2d ed. This, and dictionary definitions of alkanet, support the conclusion that the alkanet root is chiefly used as a dye. Item 470.80, TSUS, provides for crude or processed products of vegetable origin used chiefly for coloring or tanning, not specially provided for.

Natural indigo is classified by name in item 406.60, TSUS. It is a benzenoid product which, if competitive with similar products of U.S. origin, is subject to ad valorem rates based on the American selling price of the domestic product. (See headnote 4, pt. 1, schedule 4, TSUS.)

Holding.—Henna and madder, in crude or processed form, are classifiable in item 470.10, TSUS, and are duty free. Tara, in crude or processed form, is classifiable in item 470.20, TSUS, and is duty free. Alkenet root, in crude or processed form, is classifiable in item 470.80, TSUS, and is duty free. Natural indigo is classifiable in item 406.60, TSUS, and is dutiable at 2.8 cents per pound plus 18 percent ad valorem.

(C.S.D. 79-232)

Classification: Whether a Particular Knit Fabric Is Sufficiently Advanced In Condition to Constitute Unfinished Underwear

Date: October 25, 1978
File: CLA-2:R:CV:MC
059735 MH

This ruling concerns the Customs classification of knitted fabric which is made into underwear.

Issue.—Whether the submitted sample fabric is so advanced in condition as to constitute an unfinished textile article for tariff purposes.

Facts.—The submitted sample is a knitted fabric which is stated to be 85 percent nylon and 15 percent spandex. Five feet five inches across, the sample is in the form of a doubled-over piece of fabric with openings periodically spaced along each edge. It appears to have been knit in one operation. Lines of demarcation are throughout the

fabric so that when cut along those lines, women's panties with elasticized waist and leg openings are formed. The merchandise is then dyed, washed, steamed, and labeled to make a completely finished product.

Law and analysis.—It is suggested by the importer that the instant merchandise be classified under the provision for knit fabrics of manmade fibers, in item 345.50, Tariff Schedules of the United States (TSUS), rather than under the provision for knit underwear of manmade fibers, in item 378.60, TSUS.

The unfinished condition of the merchandise does not preclude its being a textile article for tariff purposes. General headnote 10(h), TSUS, reads as follows:

> unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled and whether finished or not finished.

The point at which fabric is sufficiently advanced in condition so as to constitute a textile article was the issue in *United States* v. *Buss & Co.*, 5 Ct. Cust. Appeals, 110, T.D. 34138 (1914). That case concerned the tariff classification of a woven cotton fabric with woven crossmarks which indicated where the fabric was to be cut to make coat hangers. The court held that where the character or identity of the individual article is "fixed with certainty" and the piece in its entirety is not "commercially capable of any other use," the article is treated for tariff purposes as if already cut apart and assessed according to its individual character.

The lines of demarcation demonstrate that the merchandise is to be cut into articles of underwear. The importer seems to indicate that the instant sample is also to be used to make halter tops. If such a use were commercially practicable, the merchandise might be treated for tariff purposes as either a textile fabric or an article of textile materials not specially provided for, rather than an article dedicated to a specific use.

The construction of the instant merchandise makes production into halter tops unlikely. The lines of demarcation together with the openings at either end render the article unsuitable for anything other than underwear.

The identity of the sample is thus clearly fixed and its use equally definite. It must, therefore, be treated for tariff purposes as underwear since it is dedicated to that use and does not appear to be commercially suited for any other purpose.

Holding.—The submitted sample is classifiable under the provision for other underwear, not ornamented, of manmade fibers, in item 378.60, TSUS. It is dutiable, as a product of Brazil, at the rate of 25 cents per pound plus 35 percent ad valorem.

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Reference Area, Room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through April 11, 1979, are available in microfiche format at a cost of $6.90 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: May 21, 1979.

DONALD W. LEWIS,
Acting Assistant Commissioner,
Regulations and Rulings.

Date of decision	File No.	Issue
5- 8-79	103734	Vessels: Requirements for clearance, reporting arrival, and making entry
4-24-79	103849	Carrier control: Use of a foreign-built vessel as a fish processing vessel in U.S. territorial waters
3- 5-79	103886	Carrier control: Whether temporary unlading of cargo from a foreign vessel landed in the U.S. for repairs is violative of the coastwise laws
4-23-79	103901	Vessel repair: Whether foreign repairs to a vessel's crane necessary to secure the safety and seaworthiness of the vessel
4-23-79	306626	Exportation of in-bond merchandise: Customs supervision and verification
4-27-79	710326	Exemptions: Whether the personal effects of a deceased U.S. citizen who was a resident of Mexico entitled to duty-free entry
4-23-79	710198	Entry: Clearance of baggage transported in transit through U.S.
4-10-79	055373	Classification: Tungsten carbide inserts for files (649.41, 649.53)
3- 9-79	057329	Classification: Ticket dispensing traffic control device (274.75, 274.90, 653.20, 676.25, 676.52)
5- 8-79	055404	Valuation: Whether a reduced price close-out sale to a related selected purchaser fairly reflects the market value for the purpose of determining export value
2-26-79	055451	Classification: Scissors; needles; cotton thread; safety pins; plastic buttons (303.20, 650.91, 651.05, 745.34, 745.56)
3- 1-79	055475	American selling price: Woman's sandal (700.60)
2-15-79	055490	Classification: Gold coins (653.22)
4- 2-79	057407	Classification: Galvanized steel sheets (608.95, 657.25)
3-13-79	057498	Classification: Textile cover for heating pad (367.50, 389.40, 684.50)
3-15-79	057504	Classification: Production line machinery for making plastic sheeting (661.70, 662.26, 664.10, 678.50, 685.90, 712.49)
4-10-79	057528	Classification: Toy house (245.30, 735.20, 737.95)
4-10-79	057541	Classification: Plastic figure of a turkey (737.40, 737.70, 773.10)
5-2-79	057587	Classification: Chromatography equipment (547.55, 661.68, 711.88, 712.49)
4-13-79	057597	Classification: Food baller and dispenser machine (666.25, 683.32)
4-13-79	057628	Classification: Aluminum structural members used in bridges and roofing structures (652.94, 652.98)
3-8-79	057689	Classification: Tee watcher (389.50, 734.77, 737.95)
3-15-79	057693	Classification: Automobile lamp cover (692.27, 774.60)
4-5-79	057733	American selling price: Women's footwear (700.60)
3-22-79	057846	Classification: Garage creepers (207.00, 657.09-657.25, 692.60)

Date of decision	File No.	Issue
3–15–79	057857	Classification: Hydraulic painting arm (662.50)
4–12–79	057874	Classification: All-terrain cycles (692.10, 692.50)
3–26–79	057938	Classification: Security chain door latch (646.92, 647.03)
3–21–79	058880	Generalized system of preferences: Rum made from molasses from insular possession
4–17–79	058881	Classification: Door guard (685.70, 688.40)
4–17–79	058885	Classification: Tying pliers (709.25, 709.27)
4–19–79	058890	Classification: Telephone apparatus assembled abroad from U.S. components (807.00)
4–24–79	058930	Classification: Pieces of fabric assembled abroad (807.00)
4–17–79	058958	Classification: Sapphire substrate wafers (520.75)
4–25–79	058960	Classification: Rolls of paper exported for cutting and rewinding (800.00, 806.20)
4–9–79	058984	Classification: Mushrooms exported to Canada for freeze drying and returned (806.20)
4–13–79	059802	Classification: Woven billiard cloths (336.50, 336.55, 336.60, 357.10, 357.15, 357.20, 359.30)
5–3–79	059958	Classification: Knit sweaters (382.05, 382.39)
4–12–79	060242	Duty assessment: Domestic crude oil pumped via Canadian pipelines from Montana to Minnesota
3–9–79	060294	Classification: Meats (106.10, 107.60)
4–2–79	060328	Classification: Elastic package ties (349.10, 389.62)
4–25–79	060349	Classification: Western-style shirts (380.21)
3–12–79	061012	American selling price: Athletic shoe (700.60)
4–10–79	062027	Classification: Central heating fireplace (653.45, 653.50, 653.51, 653.55)
4–23–79	063005	Classification: Microwave browning grill (533.77)

ERRATUM

In CUSTOMS BULLETIN, vol. 13, No. 13, dated March 28, 1979, in T.D. 79–84–K, on page 17, correct fourth line to read:

Section 1313(a) merchandise: Imported p-aminophenol, m-aminophenol

and sixth line to read:

Section 1313(b) merchandise: p-aminophenol, m-aminophenol

Decisions of the United States Customs Court

Customs Decision

(C.D. 4801)

VOSS INTERNATIONAL CORP., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 75-8-02154

[Judgment for defendant.]

(Decided May 7, 1979)

Glad, Tuttle & White (*Edward N. Glad* of counsel) for the plaintiff.

Barbara Allen Babcock, Assistant Attorney General (*David M. Cohen*, Branch Director; *Joseph I. Liebman*, Attorney in Charge, Field Office for Customs Litigation; *Bruce M. Mitchell*, trial attorney), for the defendant.

MALETZ, Judge: In this case plaintiff challenges the amount of special dumping duties that were assessed against asbestos cement pipe which was exported from Japan on February 13, 1972, and en-

tered at the port of Los Angeles in March 1972.[1] The case arises as follows: Pursuant to the Secretary of the Treasury's finding of dumping, the Customs Service ascertained the foreign market value as defined in 19 U.S.C. 164 and the purchase price as defined in 19 U.S.C. 162, and assessed special dumping duties in an amount equal to the difference, as required by 19 U.S.C. 161.

Plaintiff does not question the "foreign market value" as determined by Customs or the use of "purchase price" for purpose of comparison with the "foreign market value." However, plaintiff claims that the "purchase price" utilized by Customs was not the proper "purchase price" as defined by 19 U.S.C. 162 which provides in part:

> For the purposes of sections 160 to 171 of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, * * *.

More particularly, in assessing the special dumping duties in question, Customs determined that the Japanese trading firm of Marubeni-Iida Co. Ltd. (Marubeni Japan) was the purchaser of the subject merchandise and that its wholly owned subsidiary, Marubeni-Iida (America), Inc. (Marubeni America) was the person by whom or for whose account the merchandise was imported. On this basis, Customs concluded that the price paid by Marubeni Japan to the Japanese manufacturer of the merchandise, Kubota Iron & Machinery Works, Ltd. (Kubota) represented the "purchase price" as defined by 19 U.S.C. 162.

Plaintiff argues, however, the Marubeni Japan was related to the manufacturer, Kubota, and that Marubeni Japan acted as a selling agent for the manufacturer. In addition, plaintiff contends that it, Voss, is "the person by whom or for whose account the merchandise * * * [was] imported" so that the price paid by Voss is the "purchase price" which should bave been used in determining the dumping duties.

The facts are these: In the late 1950's, plaintiff Voss which had been importing pipe from Europe became aware of a demand for asbestos cement pipe which was used as a water pipe by west coast municipalities and land developers. This demand was occasioned by the fact that such pipe is inert to the high alkaline soil conditions in the desert and is, therefore, better suited than cast iron pressure pipe for transmission of water in desert areas.

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[1] Plaintiff's complaint in this case consists of two causes of action. In the first cause of action, plaintiff contended that the International Trade Commission's determination of injury was procedurally invalid. The court, however, held that the Commission's determination of injury was valid and entered summary judgment as to that cause of action. *Voss International Corp.* v. *United States*, 78 Cust. Ct. 130, C.D. 4698, 432 F. Supp. 205 (1977). Involved here is plaintiff's second cause of action.

In an effort to find a source for such asbestos cement pipe, Mr. Arthur H. Voss, the president of Voss, went to Japan and had a series of meetings with Kubota, a prominent Japanese pipe manufacturing concern, which represented that it could produce asbestos cement pipe to American standard specifications. These meetings culminated with an initial agreement on August 1, 1960, followed by subsequent agreements in 1966, 1968, and 1969, none of which are relevant to the present controversy.

This brings us to the agreement of January 22, 1971 which is directly relevant here since the purchase orders for the entries in question were made in that year. This agreement was in the form of a letter from Marubeni Japan to Voss which was confirmed by Voss and Kubota. At the outset, the letter states:

> We are pleased to confirm our agreement concerning our transaction of "KUBOTA" Asbestos Cement Pipe to be shipped during 1971, reached among Kubota, Ltd. as manufacturer, *Voss International Corp. as buyer and Marubeni-Iida Co., Ltd. as seller*, in the discussion held by the above parties on January 21, 1971 at Tokyo on terms and conditions set forth hereunder. [Emphasis added.]

The agreement then prescribes the specific dollar price for various diameters and class of pipe, FAS, Osaka; requires Voss to purchase approximately 18,000 tons of pipe during 1971; and sets forth size and length specifications.

The January 22, 1971 agreement between Voss and Marubeni Japan contained the following provision for payment:

> Payment by Voss International Corp. to Marubeni-Iida (America), Inc. for Kubota Asbestos Cement Pipe is made within 140 days after the date of Bill of Lading and the balance of draft payable to Marubeni is kept always within US$500,000.00 of credit limit. When the balance of draft reaches to this credit limit, Voss International Corp. will pay in cash the old outstanding drafts prior to the original due date to get the new shipment, so that the balance of draft payable can be always kept within the US$500,000.00 of credit limit. Further the above settlement of outstanding balance of draft is to be made before Voss receives the shipping documents of new shipment. For the above earlier payment, Marubeni agreed to give the discount to Voss International Corp. which is to be at an interest rate of prime rate plus 1.5% per annum.

The agreement further provided for a sales promotion fund, as follows:

> The sales promotion fund should be set up on the same arrangement as 1968 for the sales promotion expenses. Voss/Marubeni/Kubota agree that 90 cents per ton shall be contributed as follows:
>
> (a) One-third each by Voss/Marubeni/Kubota.

(b) The fund to be mutually administered and mutually managed by the designated representative of each party.

Finally, the agreement contained the below quoted provision for increased costs:

> The price payable by the Buyer to the Seller under this agreement shall be based upon present exchange parity rate of Japanese Yen Three Hundred Sixty to One U.S. Dollar. In case of any devaluation and/or revaluation of U.S. Dollar and/or Japanese Yen after the date of this agreement, the price shall be renegotiated among the concerned parties.

On September 7, 1971, Marubeni America and Voss reached a supplemental agreement with regard to the then existing floating or revaluation of Japanese yen. This agreement provided that the exchange loss due to yen fluctuation was for the buyer's that is, Voss' account. The agreement further provided that for each transaction the difference in exchange rates between the time of negotiation of the shipping documents and the time before President Nixon's proclamation of August 15, 1971, would be borne by the buyer, that is, Voss, and that this difference would be paid by Voss to Marubeni America in cash at the exchange rate immediately after Voss received the invoice.[2] Finally, the agreement specified that it was to be applicable to all the outstanding balances of specifically listed purchase orders (which included the purchase orders here in issue).

Other facts of relevance in the case are these: The consumption entry prepared by Voss identifies Voss as the importer of record and as the person for whose account the merchandise was imported. Also, the record establishes that Voss paid the duties in question. On the other hand, the special Customs invoice filled out by Marubeni Japan identifies Marubeni America as the "purchaser" of the merchandise. Further, the packing list also filled out by Marubeni Japan identifies Marubeni America as the part for whose account and risk the merchandise in question was sold. Additionally, Voss paid for the imported pipe in question by check made out to Marubeni America.

Finally, the clear weight of the evidence establishes (1) that Kubota and Marubeni Japan entered into a sales contract for exportation of cement asbestos pipe to the United States, with Kubota having no direct transactions with either Marubeni America or Voss; (2) that a contract is then concluded between Marubeni Japan and Voss for each calendar year; (3) that Kubota sells the subject merchandise to

[2] On this aspect, the agreement stated:

For example: If the exchange rate which prevailed before [President] Nixon's proclamation was ¥357.- per U.S. Dollar and the rate at the time of document negotiations was ¥337.- per U.S. Dollar, the difference of ¥20.- per U.S. Dollar by the total invoice amount for the particular shipment will be the amount of exchange loss which will be paid in cash by the buyer. This loss amount will be converted into U.S. Dollars at the rate of ¥337.- per U.S. Dollar in this case.

Marubeni Japan on the basis of FAS, Osaka and Marubeni Japan generally pays Kubota 80 percent of the purchase price within 20 days after the date of the sales contract and pays the balance of 20 percent within 2 weeks after shipping; (4) that Kubota and Marubeni Japan negotiated on a "principal to principal" basis; and (5) that Marubeni Japan sells the subject merchandise to Voss on an FAS, Osaka, basis.

Based on the record, it is apparent that Marubeni Japan was not related to the manufacturer, Kubota, and that Marubeni Japan was not a selling agent for the manufacturer, as plaintiff contends. Rather, the record is clear that Kubota and Marubeni Japan negotiated on a principal to principal basis.

We consider next the question as to whether Marubeni America or Voss was the "person by whom or for whose account the merchandise * * * [was] imported." As to this, the court is quite mindful that in response to a questionnaire of the Customs Service, Marubeni Japan alleges that it sold the subject merchandise to Marubeni America which in turn sold it to Voss. And as previously noted, the special Customs invoice and the packing list both prepared by Marubeni Japan are to similar effect. However, little if any weight can be given to this evidence when it is considered that the basic agreement of January 22, 1971—which is the best evidence of the substance of the transaction between the parties—makes it clear that the relationship between Voss and Marubeni is that of buyer and seller.

In this connection, the Customs Service determined that Marubeni Japan was the *purchaser* of the subject merchandise and that its wholly-owned subsidary, Marubeni America, was the *person* by whom or for whose account the merchandise was imported. And it is of course basic that these determinations enjoy the presumption of correctness. However, they are erroneous as a matter of law. For the determinations that Marubeni Japan was the *purchaser* and that Marubeni America was the *person* by whom or for whose account the merchandise was imported are directly contrary to 19 U.S.C. 162. That section, to repeat, provides that "the purchase price of imported merchandise shall be the price at which such merchandise has been purchased * * * by *the person* by whom or for whose account the merchandise is imported * * *." [Emphasis added.] Manifestly, the provision does not contemplate *two* persons or entities in its definition of "purchase price." Rather, the provision contemplates that the price that becomes the "purchase price" is the price at which *the person* by whom or for whose account the merchandise is imported agrees to purchase said merchandise. If Marubeni America is that person, as determined by Customs, it is simply not possible under the statutory scheme for Marubeni Japan to be the purchaser. Indeed, as the defendant itself states in its brief (p. 29): "*Realistically viewed,*

the transactions between Marubeni Japan and Marubeni America involved the movement of goods from one portion of the same corporate entity to another." [Emphasis added.]

The conclusion thus becomes inescapable that Marubeni Japan was the seller of the merchandise; that Voss was the person by whom the merchandise was imported; and that while Marubeni America was a corporate subsidiary of Marubeni Japan, it was in substance, insofar as the present transaction is concerned, simply one adjunct of the same Marubeni corporate entity. See *Mitsui & Co.* v. *United States*, 68 Cust. Ct. 266, 270, R.D. 11767 (1972).

But although Voss was the person by whom the merchandise was imported, this does not end the matter. For there remains the question as to whether or not Voss' price was a proper "purchase price" for purposes of 19 U.S.C. 162 which at the risk of further repetition provides that the purchase price "shall be the price at which such merchandise has been purchased or agreed to be purchased, *prior to the time of exportation* * * *." [Emphasis added.]

With respect to this question, plaintiff contends that the "purchase price" of the subject merchandise was that specified in the January 22, 1971 agreement between Voss and Marubeni Japan. However, I cannot agree since, as set out below, the record demonstrates that the price which Voss agreed to pay Marubeni for the merchandise was not actually established until February 18, 1972, 5 days after exportation.

At the outset, it is clear that the Antidumping Act envisions that a definite and determinable purchase price (whether actual or agreed) must exist prior to the date of exportation for comparison with the foreign market value—this in order to determine the margin of dumping. In this respect, Mr. Voss, the president of Voss, testified that at the time Voss confirmed the January 22, 1971 agreement with Marubeni Japan "[t]here was no way of knowing" exactly what the total amount for the imported merchandise would be. Under the terms of this agreement, the price payable by Voss to Marubeni was to be based upon the then exchange parity of 360 Japanese yen to 1 U.S. dollar. However, the agreement further provided that "[i]n case of any devaluation and/or revaluation of U.S. dollar and/or Japanese yen after the date of this agreement, the price shall be renegotiated among the concerned parties." Therefore, as of January 22, 1971, the prices set forth in the agreement of that date were subject to renegotiation in the event that the Japanese yen was devalued after the date of that agreement.

Thereafter, on September 7, 1971, Voss and Marubeni entered into a supplemental agreement concerning the effect of any revaluation of the yen. That agreement, as previously noted, provided that Voss would assume the loss due to yen fluctuation; and that Voss would pay to Marubeni "[t]he difference in exchange rates between the time of

negotiation of the shipping documents and the time before [President] Nixon's proclamation of August 15, 1971." Further, at trial, Mr. Voss acknowledged that pursuant to the supplemental September 7, 1971 agreement, the amount representing the loss due to currency fluctuation, which Voss had to bear, would be determined on the date that Voss received the shipping documents and that Voss would know the exact price it had to pay for the merchandise on that date. The record is uncontroverted that Voss received the shipping documents on February 18, 1972. Therefore, as Mr. Voss conceded at trial, at the time the merchandise was exported, that is, February 13, 1972, Voss did not know the exact amount it would have to pay for the merchandise. Indeed, Mr. Voss testified that on or before February 13, 1972, the date of exportation, it was "impossible" to know the exact price for the merchandise.

In short, the September 7, 1971 supplemental agreement provided, in essence, that the actual price which Voss was required to pay would be determined by a condition subsequent, that is, the possible devaluation or revaluation of the Japanese yen. The date upon which the effect of currency fluctuation was to be determined was not set until the date of the negotiation of the shipping documents, which in this case was February 18, 1972. Therefore, as we have seen, the total, definite, and fixed price which Voss agreed to pay for the merchandise was not finally determined until February 18, 1972, 5 days after the date of exportation, February 13, 1972.

Stated otherwise, at the time of the original agreement, January 22, 1971, and at the time of the supplemental agreement, September 7, 1971, it was not only impossible to know what effect currency fluctuations would have on the ultimate purchase price but, also, whether there would be any effect at all. As previously observed, at the time the merchandise was exported, February 13, 1972. Voss did not know the exact amount it would have to pay for the merchandise. And the price which Voss eventually paid for the merchandise was not the price set forth in the January 22, 1971 agreement, because the value of the Japanese yen subsequently changed.

Accordingly, the price which Voss paid or agreed to pay Marubeni was not the "purchase price" for purposes of 19 U.S.C. 162, because it was not a price paid or agreed to be paid "prior to the date of exportation." The supplemental agreement between Voss and Marubeni regarding the loss due to currency fluctuation frustrates the intent of the Antidumping Act since it is an agreement to pay an amount to be determined after the date of exportation and thus may not form a basis for the determination of the "purchase price" as defined in 19 U.S.C. 162.

For the foregoing reasons, the action is hereby dismissed.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *May 14, 1979.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P79/70	Landis, J. May 7, 1979	A. N. Deringer, Inc.	74-7-01809, etc.	Item 608.08 11% or 9.5% (MP52) Item 608.08 9.5% (one entry of MP32) Item 608.05 0.3¢ per lb.	Item 608.04 0.37¢ or 0.31¢ per ton plus additional duties (MP52) Item 608.02 Duty free (MP32,	John V. Carr & Sons, Inc. v. U.S. (C.D. 2384); U.S. Customs Service ruling letter of 12-22-75	Champlain—Rouses Point (Ogdensburg) Iron powders (MP52 produced by Domtar, Ltd.; MP32, MP40, MP61 and MP62 produced by Domtar, Ltd. covered by ruling letter of 12-22-75)

				(MP32, MP40, MP61 and MP62)	MP40, MP61 and MP62)		
P79/71	Landis, J. May 7, 1979	Sanyo Electric Inc.	78-11-02030	Item 720.42 12.5%	Item 720.02 37¢ each	Agreed statement of facts	Los Angeles Clock movements without dials or hands, less than 1.77 inches in width, etc.
P79/72	Watson, J. May 8, 1979	Seaway Importing Co.	74-11-03032, etc.	Item 389.60 25¢ per lb. +27%, 24%, 21%, 18% or 15%	Item 735.20 18%, 16%, 14%, 12% or 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	San Francisco Backpacking tents
P79/73	Boe, J. May 8, 1979	United China & Glass Co.	69/38859, etc.	Item 544.51 26.5%	Item 688.40 9%	The Englishtown Corporation v. U.S. C.A.D. (1187)	Philadelphia Makeup mirror with lights which does not have a molded plastic case or container, but has a detachable plastic carrying case
P79/74	Watson, J. May 9, 1979	Clairol, Inc.	75-7-01877	Items 544.51/807.00 17.5% upon full value of merchandise less cost or value of prefabricated U.S. manufactured components	Items 688.40/807.00 5.5% upon full value of imported merchandise, less cost or value of prefabricated U.S. manufactured components contained in models [C]LM2 and [C]LM5 which were	The Englishtown Corporation v. U.S. (C.A.D. 1187)	New York American goods returned; electrical makeup appliances incorporating mirrors, lights and other features (models [C]LM2 and [C]LM5)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
					found applicable upon liquidation of merchandise		
P79/75	Watson, J. May 9, 1979	Naftone Inc. Mobay Chemical Co.	75-5-01311	Item 405.25 14%+2.2¢ per lb.; 12.5%+ 1.9¢ per lb.; or 10.5%+ 1.6¢ per lb.	Item 494.60 4%, 3% or 2.5%	Naftone, Inc. v. U.S. (C.D. 4578, aff'd C.A.D. 1166)	New York Desmocoll 400, etc.; hydroxylated polyurethane products
P79/76	Boe, J. May 9, 1979	Export Import Services, Inc. for the account of Clairol, Inc., et al.	75-1-00331, etc.	Items 544.51/ 807.00 20.5% or 17.5% upon full value of merchandise, less cost or value of prefabricated U.S. manufactured components	Items 688.40/ 807.00 6.5% or 5.5% upon full value of imported merchandise, less cost or value of prefabricated U.S. manufactured components contained in models [C]LM2, [C]LM3, LM4, and LM5 which were found applicable upon liquidation of merchandise	The Englishtown Corporation v. U.S. (C.A.D. 1187)	New York American goods returned; electrical makeup appliances incorporating mirrors, lights and other features (models [C]LM2, [C]LM3, LM4, and LM5)

P79/77	Boe, J. May 9, 1979	United China & Glass Co.	74-2-00358, etc.	Item 544.51 23.5% or 17.5%	Item 688.40 8% (entry 107283); 5.5% (entries 113807 and 113311)	The Englishtown Corporation v. U.S. (C.A.D. 1187)	Philadelphia Makeup mirror with lights which does not have a molded plastic case or container, but has a detachable plastic carrying case
P79/78	Watson, J. May 10, 1979	International Paint Co. (California), Inc.	67/10151, etc.	Item 409.00 7¢ per lb. + 45%; 6.3¢ per lb. + 40%	Item 405.15 3.5¢ per lb. + 25%; 3¢ per lb. + 22.5%	Agreed statement of facts	New York Antifouling Paste Paint H134; "pesticides"
P79/79	Boe, J. May 10, 1979	Clairol, Inc.	76-4-01005	Items 544.51/807.00 20.5% or 17.5% upon full value of merchandise less cost or value of prefabricated U.S. manufactured components Item 544.51 20.5% or 17.5% upon full value of merchandise	Items 688.40/807.00 6.5% or 5.5% upon full value of imported merchandise, less cost or value of prefabricated U.S. manufactured components contained in models [C]LM2, [C]LM3 (except entries 194532, 225862, K256833, K253611, K253731, K253612 and K249588), and [C]LM5, which were found appli-	The Englishtown Corporation v. U.S. (C.A.D. 1187)	New York Electrical makeup appliances incorporating mirrors, lights and other features (models LM1, [C]LM2, [C]LM3, LM4 and [C]LM5)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
					cable upon liquidation of merchandise; and upon full value of imported merchandise less cost or value ($1.45224, $1.38605, $2.3754 and $1.38605 each, respectively) of prefabricated U.S. manufactured components contained in models LM1 and [C]LM3 imported in 1971 and LM4 and [C]LM3 imported in 1972 (included in entries 194532, 225862, K256833, K253611, K253731, K253612 and K249588)		

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R79/63	Landis, J. May 7, 1979	National Silver Co.	R60/3074	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Portland, Oreg. Flatware
R79/64	Landis, J. May 7, 1979	National Silver Co.	R61/1456	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R79/65	Landis, J. May 8, 1979	National Silver Co.	R64/15275	Export value	F.o.b. invoice unit prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Baltimore Porcelainware

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R79/66	Landis, J. May 8, 1979	New York Merchandise Co., Inc.	R60/14722, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R79/67	Landis, J. May 8, 1979	Nozaki Associates, Inc.	R59/5132, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Seattle Canned tuna
R79/68	Landis, J. May 8, 1979	Randa, Inc.	R61/17042	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R79/69	Landis, J. May 8, 1979	Trans World Industries, Inc.	R63/1340	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Sewing machine heads
R79/70	Landis, J. May 8, 1979	United Silver & Cutlery Co.	R59/11147, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Flatware

R79/71	Landis, J.; May 9, 1979	National Silver Co.	R63/3138, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Chinaware
R79/72	Landis, J. May 9, 1979	Nichimen Co., Inc.	R63/871, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Sewing machine heads
R79/73	Watson J. May 9, 1979	Sandoz-Wander Inc.	75-7-01799	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 31.1% and 29.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class of kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.32 or such other factor applied by customs officer to allow for customs duties payable on the imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R79/74	Landis, J. May 10, 1979	Trans World Industries, Inc.	R69/11151, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	New York Sewing machines
R79/75	Watson, J. May 10, 1979	Sandoz-Wander, Inc.	73-7-02057	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 31.1% and 29.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.32 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

Judgment of the United States Customs Court in Appealed Case

MAY 11, 1979

Appeal 78–14.—United States *v.* Sortex Company of North America, Inc.—SORTEX MACHINES—ELECTRICAL MEASURING, CHECKING, ANALYZING OR AUTOMATICALLY-CONTROLLING INSTRUMENTS AND APPARATUS—INDUSTRIAL MACHINERY FOR PREPARING AND MANUFACTURING FOOD—TSUS.—C.D. 4746 affirmed March 29, 1979 (C.A.D. 1221).

International Trade Commission Notices

Investigations by the United States International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

PORCELAIN-ON-STEEL COOKING WARE

[TA-201-39]

Notice of Investigation and Hearing

Investigation instituted.—Following receipt of a petition on May 4, 1979, filed on behalf of the General Housewares Corp., Terre Haute, Ind., the U.S. International Trade Commission on May 15, 1979, instituted an investigation under section 201(b) of the Trade Act of 1974 to determine whether cooking ware of steel, enameled or glazed with vitreous glasses, provided for in item 653.97 of the Tariff Schedules of the United States (TSUS), is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Public hearing ordered.—A public hearing in connection with this investigation will be held in Washington, D.C., at 10 a.m., e.d.t., on Thursday, July 12, 1979, in the hearing room, U.S. International Trade Commission Building, 701 E Street, NW. Requests for appearances at the hearing should be received in writing by the Secretary of the Commission at his office in Washington not later than noon, Friday, July 6, 1979.

Inspection of petition.—The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission and at the New York City office of the U.S. International Trade Commission located at 6 World Trade Center.

By order of the Commission.

KENNETH R. MASON,
Secretary.

Issued: May 16, 1979.

Index

U.S. Customs Service

Customs Court

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

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